

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BRIAN WHITE,)
)
)
Movant,)
)
)
v.) No. 4:13-CV-454 CAS
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

MEMORANDUM AND ORDER OF TRANSFER

This matter is before the Court upon the motion of Brian White to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255.¹

On September 24, 2003, White entered a plea of guilty to charges of conspiracy to possess with intent to distribute and possess with intent to distribute heroin, cocaine, and cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and 846; distribution of heroin, in violation of 21 U.S.C. § 841(a)(1); possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A); felon in possession of a firearm, in violation of 18 U.S.C. § 922(g); and distribution of heroin and cocaine, in violation of 21 U.S.C. § 841(a)(1). U.S. v. White, No. 4:02-CR-606 CAS (E.D. Mo.). On February 27, 2004, movant was sentenced to 400 months imprisonment and 5 years of supervised release. The United States Court of Appeals for the Eighth Circuit affirmed the judgment on June 1, 2005. U.S. v. White, No. 04-1580 (8th Cir. 2005).

The Court's records show that movant previously brought a motion for relief under 28 U.S.C.

¹Initially, Mr. White filed his motion without an original signature. See Doc. 1. The motion was returned to him for signature, and he refiled the motion with original signature on April 8, 2013. See Doc. 3.

§ 2255, which this Court denied on the merits on June 19, 2007. See White v. United States, No. 4:06-CV-1634 SNL (E.D.Mo). On January 14, 2008, the Eighth Circuit denied movant's application for a certificate of appealability, and the appeal was dismissed. White v. U.S., No. 07-2726 (8th Cir. 2008). The United States Supreme Court denied the petition for a writ of certiorari on May 27, 2008.

As amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2255 now provides that a "second or successive motion must be certified . . . by a panel of the appropriate court of appeals" to contain certain information. 28 U.S.C. § 2244(b)(3)(A) provides that "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."

Because movant did not obtain permission from the Eighth Circuit Court of Appeals to maintain the instant § 2255 motion in this Court, the Court lacks authority to grant movant the relief he seeks. Rather than dismiss this action, the Court will deny movant relief, without prejudice, and transfer the motion to the United States Court of Appeals for the Eighth Circuit pursuant to 28 U.S.C. § 1631. See In re Sims, 111 F.3d 45, 47 (6th Cir. 1997); Coleman v. United States, 106 F.3d 339 (10th Cir. 1997); Liriano v. United States, 95 F.3d 119, 122-23 (2d Cir. 1996).

Accordingly,

IT IS HEREBY ORDERED that movant Brian White's motion to vacate, set aside, or correct sentence is **DENIED without prejudice** because movant did not obtain permission from the United States Court of Appeals for the Eighth Circuit to bring the motion in this Court. See 28 U.S.C. § 2255. [Docs. 1 and 3]

IT IS FURTHER ORDERED that the Clerk shall **TRANSFER** the instant motion to the United States Court of Appeals for the Eighth Circuit pursuant to 28 U.S.C. § 1631.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 30th day of April, 2013.